

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed December 28, 2004. For the reasons given below, Applicants submit that the pending claims are patentably distinguishable over the cited references. Applicants, therefore, respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

The Examiner rejects Claims 1, 2, 4, 6, 7, 9-16, 18, 20-23, 25-31, 33, 35, and 37-42 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 5,987,011 by Toh ("*Toh*").

Applicants have amended independent Claims 1, 14, 30 and 42 to include limitations similar to the limitations recited in now-cancelled Claims 4, 18, and 33. In addition, Applicants have amended independent Claims 1, 14, 30 and 42 to clarify that the link quality measurement is made at a single point in time, unlike the *Toh* which measures the stability (via an associativity characteristic) of a link. Therefore, Claim 1 of the present application as amended recites:

A method for routing communications at a mobile station, comprising:
at a mobile station, determining one or more routing metrics associated with each of a plurality of communication paths coupling the mobile station and a destination device, wherein at least one of the routing metrics comprises the link quality of at least one wireless communication link included in each of the communication paths, wherein the link quality used as a routing metric comprises a link quality measurement made at a single point in time, wherein determining the link quality of the wireless communication link comprises measuring the link quality of a control channel established with a device with which the wireless communication link is to be established, and wherein at least one of the communication paths includes a wireless communication link using a different wireless communication protocol than a wireless communication link of one or more of the other communication paths;
at the mobile station, receiving routing information from one or more routers coupling the mobile station and the destination device; and
routing a communication to the destination device based on the determined routing metrics and the received routing information.

Claims 14, 30 and 42, as amended, recite similar, although not identical, limitations.

Claims 1, 14, 30 and 42 are allowable at least because *Toh* does not disclose determining the link *quality* associated with each of a plurality of communication paths coupling a mobile station and a destination device, wherein the link quality comprises a link quality measurement made *at a single point in time*. For a teaching of the measurement of link quality as recited in the present claims, the Examiner cites to *Toh's* disclosure of the measurement of the *stability* of links between neighboring hosts based on the number of "identifier signals" received over a link. *Toh, Column 3, lines 39-56*. *Toh* explains that the stability of a link is measured using an "associativity characteristic," which is "measured by each mobile host periodically transmitting and receiving identifier beacons (ticks)." "The greater the number of ticks associated with a given link, the greater its stability or longevity." *Toh, Column 3, lines 25-38*. *Toh, Column 3, lines 25-38*.

However, the "link quality" recited in the present claims is not a measurement of the stability of a link, as described in *Toh*. Rather, stability is similar to the "reliability" metric described as page 15, lines 1-5 of the present application, which relates to the historical dependability of a link. To further clarify the difference between quality and stability, Applicants have amended Claims 1, 14, 30 and 42 to recite that the link quality used as a routing metric comprises a link quality measurement made *at a single point in time*. There is no disclosure in *Toh* of determining the link quality in this manner (since link stability requires a number of measurements over time). For at least this reason, Claims 1, 14, 30 and 42 are allowable.

Furthermore, Claims 1, 14, 30 and 42 recite measuring link quality using a control channel established with a device with which a wireless communication link is to be established. The Examiner states that *Toh* discloses this limitation at column 7, lines 41-50 and column 8, line 59 through column 9, line 13. However, as Applicants argued previously, the first cited passage does not relate at all to control channels or the use of control channels. In his "Response to Arguments" section, the Examiner states that second cited passage discloses that link quality information is transmitted in a BQ "control packet." However, this passage does not disclose the recited limitation. First, there is no disclosure that a control channel is used to communicate the control packet. Just because there is control packet does not mean there is a control *channel* different than a wireless communication link that is to be

established. Furthermore, even if it assumed for the sake of argument that there is a disclosure of a control channel, there is certainly no disclosure that it is the link quality of the control channel *itself* that is measured (rather than simply being used to communicate the BQ control packets). Finally, as described above, there is no disclosure of the measurement of link *quality* – only link stability. For at least these additional reasons, Claims 1, 14, 30 and 42 are allowable.

For at least the reasons provided above, Applicants believe Claims 1, 14, 30, and 42 to be allowable over *Toh*. Therefore, Applicants respectfully request reconsideration and allowance of Claims 1, 14, 30, and 42, as well as all claims that depend from these independent claims.

In addition to depending from an allowable independent claim, Claims 2, 15 and 32 recite measuring the link quality of the wireless communication links immediately before routing the communication. The Examiner states that *Toh* inherently discloses this limitation “as evidenced by the fact that such information is known right before the communication is sent because the link quality will change as time passes.” However, as pointed out above, *Toh* disclosure the measurement of historical link *stability* or reliability, not link quality as measured at a single point in time. It would not be necessary that such historically link stability be measured immediately before routing the communication since it is measured over a period of time and does not rely on a single measurement. With regard to inherency of a reference, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” M.P.E.P § 2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)). Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. M.P.E.P § 2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)). In this case, Applicants respectfully submit there has not been a showing that the allegedly inherent characteristic necessarily flows from the teachings of *Toh*. Therefore, Applicants submit that Claims 2, 15 and 32 are allowable for this additional reason and respectfully request reconsideration and allowance.

Rejections under 35 U.S.C. § 103

The Examiner rejects Claims 3, 17, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Toh* in view of U.S. Patent 6,574,235 by Arslan et al. ("*Arslan*"), and rejects Claims 8, 24, and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Toh* in view of U.S. Patent 6,329,902 by Lee et al. ("*Lee*"). Although these claims include novel limitations in addition to those limitations described above with respect to Claims 1, 14, 30, and 42, these claims are at least allowable as depending from one of allowable independent Claims 1, 14, or 30. Therefore, Applicants respectfully request consideration and allowance of Claims 3, 8, 17, 24, 32, and 36.

CONCLUSION

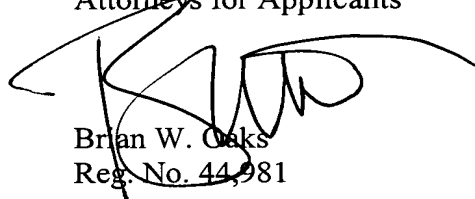
Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully request full allowance of all the pending claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicants hereby request a telephone conference with the Examiner and further requests that the Examiner contact the undersigned attorney to schedule the telephone conference.

Applicants believe no fees are due, however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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